A

Juan ak Suim & Ors v Emperang ak Bayuk & Ors

B

HIGH COURT (MIRI) — SUIT NO MYY-22–23/8 OF 2012
STEPHEN CHUNG J
29 SEPTEMBER 2014

C

Trusts and Trustees — Duties — Fiduciary duty — Breach of fiduciary duty — Sale and purchase of native land — Defendants entrusted to sell land on behalf of residents of longhouse — Failure to fully distribute proceeds of the sale — Whether plaintiffs' claim for the balance of the proceeds established

D

The plaintiffs and defendants were the residents of a longhouse in Miri with 51 *bileks*. The first defendant, the tuai rumah of the longhouse, together with the second, third, fourth and fifth defendants were the members of their longhouse committee known as the Jawatan Kuasa Kemajuan dan Keselamatan Kampung ('JKKK'). The residents of the longhouse who owned a parcel of communal native customary land containing approximately 403 acres, had agreed to sell the land for RM604,500. The JKKK was authorised to sell the land on behalf of the residents of the longhouse and the proceeds of the sale was to be distributed equally to the 51 *bileks*, each *bilek* to receive a sum of RM11,852.94. The land was sold and the defendants had disbursed RM6,313 as the proceeds to each of the 51 residents of the longhouse. The plaintiffs complained that the defendants had failed to pay or disburse the balance of the proceeds of the sale to each of them and hence, this action against the defendants to recover the balance which aggregated to RM144,038.47. In denying the plaintiffs' claim, the defendants alleged that the residents of the longhouse had in fact agreed to sell the land at the price of RM2,000 per acre. They testified that the purchase price of the land was RM322,000. Based on the above purchase price, the defendant alleged that they had disbursed in full the sum of RM6,313 to each of the 51 *bileks*.

E

F

G

Held, allowing the plaintiffs' claim with costs:

H

(1) The sale and purchase agreement showed that the first, second and third defendants entered into the agreement on behalf of the residents of the 51 *bileks* of the longhouse to sell the land for the agreed purchase price of RM604,500. The name of the head of each of the 51 *bileks* was set out in *lampiran* A attached to the agreement. There was nothing in the agreement to provide for the purchase price of the land at RM2,000 per acre or for RM322,000 as alleged by the defendants. The agreement clearly contradicted the pleadings and testimonies of the defendants that the purchase price of the land was RM322,000 (see paras 9–10).

I

(2) Further, in preamble C of the agreement, the purchaser agreed and had paid a sum of RM20,000 to the three defendants as deposit and part payment of the purchase price. The balance of the purchase price of RM584,500 would be paid upon the execution of the sale and purchase agreement. The evidence showed that the purchaser had paid the deposit and the balance of the purchase price of RM584,500 to the three defendants and they had acknowledged receipt of this sum. It was explicitly stated in the acknowledgment that the three defendants undertook to immediately distribute and pay the said sum equally to the 51 *bileks* and that the payment 'shall be acknowledged by the said 51 claimants' (see paras 11–12).

(3) In appointing the defendants as members of the JKKK and to sell the land on behalf of the residents, the residents had put their trust and faith on the defendants as their leaders and representatives to look after the interests and affairs of the longhouse and the residents of the longhouse. The plaintiffs were the owners and beneficiaries of this parcel of land and are entitled to the proceeds of the sale. As the tuai rumah and members of the JKKK, they owed a fiduciary duty of trust and care to the residents. In this case, the defendants wanted to profit from the sale and wanted to keep the balance of the purchase price for themselves. Obviously, the defendants had breached that trust and duty of care to the plaintiffs and the other residents (see paras 14–15).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan-defendan merupakan penduduk rumah panjang di Miri dengan 51 bilek. Defendan pertama, tuai rumah kepada rumah panjang itu, bersama defendan-defendan kedua, ketiga, keempat dan kelima merupakan ahli jawatankuasa rumah panjang mereka dikenali sebagai Jawatan Kuasa Kemajuan dan Keselamatan Kampung ('JKKK'). Penduduk rumah panjang itu yang memiliki sebidang tanah komunal adat yang terdiri daripada lebih kurang 403 ekar, telah bersetuju untuk menjual tanah itu untuk RM604,500. JKKK itu diberi kuasa untuk menjual tanah itu bagi pihak penduduk rumah panjang itu dan hasil jualan itu akan diagihkan sama rata kepada 51 bilek itu, di mana setiap bilek akan menerima sejumlah RM11,852.94. Tanah itu telah dijual dan defendan-defendan telah mengagihkan RM6,313 sebagai hasil kepada setiap 51 penduduk rumah panjang itu. Plaintif-plaintif mengadu bahawa defendan-defendan telah gagal untuk membayar atau mengagihkan baki hasil jualan itu kepada setiap daripada mereka dan justeru, tindakan ini terhadap defendan-defendan untuk mendapat balik baki yang dianggarkan RM144,038.47. Dalam menafikan tuntutan plaintif-plaintif, defendan-defendan mengatakan bahawa penduduk rumah panjang itu sebenarnya telah bersetuju untuk menjual tanah itu pada harga RM2,000 seekar. Mereka memberi keterangan bahawa harga belian tanah itu adalah RM322,000. Berdasarkan harga belian itu, defendan

mengatakan bahawa mereka telah mengagihkan jumlah penuh RM6,313 kepada setiap 51 bilek itu.

Diputuskan, membenarkan tuntutan plaintif-plaintif dengan kos:

(1) Perjanjian jual beli menunjukkan bahawa defendan-defendan pertama, kedua dan ketiga telah memasuki perjanjian bagi pihak penduduk 51 bilek rumah panjang itu bagi menjual tanah itu dengan harga belian yang dipersetujui sejumlah RM604,500. Nama ketua untuk setiap 51 bilek itu ditetapkan dalam lampiran A yang dilampirkan kepada perjanjian itu. Tiada apa-apa dalam perjanjian itu yang memperuntukan untuk harga belian tanah itu pada RM2,000 seekar atau untuk RM322,000 sebagaimana dikatakan oleh defendan-defendan. Perjanjian itu jelas bercanggah dengan pliding dan keterangan defendan-defendan bahawa harga belian tanah itu adalah RM322,000 (lihat perenggan 9–10).

(2) Selanjutnya, dalam pendahuluan C kepada perjanjian itu, pembeli telah bersetuju dan membayar sejumlah RM20,000 kepada tiga defendan sebagai deposit dan sebahagian bayaran harga belian. Baki harga belian RM584,500 akan dibayar selepas perjanjian jual beli dilaksanakan. Keterangan menunjukkan bahawa pembeli telah membayar deposit dan baki harga belian RM584,500 kepada tiga defendan itu dan mereka telah mengakui penerimaan jumlah ini. Adalah jelas dinyatakan dalam pengakuterimaan itu bahawa ketiga-tiga defendan itu telah mengaku janji untuk mengagihkan dengan segera dan membayar jumlah tersebut sama rata kepada 51 bilek itu dan bahawa bayaran itu 'shall be acknowledged by the said 51 claimants' (lihat perenggan 11–12).

(3) Dalam melantik defendan-defendan sebagai ahli-ahli JKKK dan untuk menjual tanah itu bagi pihak penduduk, penduduk itu telah meletakkan kepercayaan dan keyakinan mereka kepada defendan-defendan sebagai ketua dan wakil mereka untuk menjaga kepentingan dan urusan rumah panjang dan penduduk rumah panjang itu. Plaintif-plaintif merupakan pemilik-pemilik dan benefisiari-benefisiari bidang tanah ini dan berhak ke atas hasil jualan itu. Sebagai tuai rumah dan ahli-ahli JKKK, mereka mempunyai kewajipan fidusiari atas amanah dan jagaan ke atas penduduk itu. Dalam kes ini, defendan-defendan menginginkan keuntungan daripada jualan itu dan ingin menyimpan baki harga belian itu untuk diri mereka. Adalah jelas, defendan-defendan telah melanggar amanah dan kewajipan berjaga-jaga terhadap plaintif-plaintif dan penduduk lain (lihat perenggan 14–15).]

Notes

For a case on fiduciary duty, see 12(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2808.

Cases referred to

Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and Other Appeals [1996] 2 MLJ 265; [1997] 2 CLJ 607, CA (refd)

Legislation referred to

Contracts Act 1950 s 24

Abun Sui (HNL & Co) for the plaintiffs.
Sam Laya (Sam & Co) for the defendants.

Stephen Chung J:

[1] The plaintiffs and the defendants are Iban and the residents of a longhouse known as Rumah Wing at Sungai Poh, Suai, Niah, Miri. There were 51 *bileks* in the longhouse and the first defendant was the tuai rumah of the longhouse. The first defendant together with the second, third, fourth and fifth defendants were the members of their longhouse committee known as the Jawatan Kuasa Kemajuan dan Keselamatan Kampung ('JKKK').

[2] The residents of the longhouse owned a parcel of communal native customary land containing approximately 403 acres situated at Sungai Telong, Suai, Niah. The residents including the plaintiffs and the defendants agreed to sell the land for RM604,500, that the JKKK was authorised to sell the land on behalf of the residents of the longhouse and that the proceeds of the sale would be distributed equally to the 51 *bileks*, each *bilek* to receive a sum of RM11,852.94.

[3] The land was sold in March 2011 and the defendants had disbursed RM6,313 as the proceeds to each of the 51 *bileks* of the longhouse. The plaintiffs complained that the defendants had failed to pay or disbursed the balance of the proceeds of the sale to each of them and sued the defendants for the balance which aggregated to RM144,038.47 with interest thereon.

[4] The defendants denied the plaintiffs' claim against them. The defendants pleaded, and the first and second defendants had testified, that at a meeting of the longhouse they had informed the residents of the longhouse that the purchase price of the land was at RM2,000 per hectare. They said that the decision was unanimously agreed to by everybody at the meeting. They said that they also informed the residents that they might use the service of a broker to sell the land. They testified that the purchase price of the land was RM322,000 only, based on the price of RM2,000 per hectare.

[5] The first and second defendants testified that based on the purchase price of RM322,000, they had disbursed in full the sum of RM6,313 to each *bilek*

which sum was put inside an envelope and given to each of the 51 *bileks*. They contended that the plaintiffs are not entitled to the sum of RM144,038.47 as demanded and that there is no merit in the plaintiffs' claim against them.

[6] At the commencement of the trial the parties agreed to the authenticity of the documents produced and exhibited in the bundles of documents used for trial, the contents subject to proof. During the trial the defendants did not produce any attendance and or minutes of any meetings to confirm that the residents of Rh Wing had agreed to sell the land at RM2,000 per hectare or for RM322,000 only. The defendants also did not produce any document that they had used or engaged the service of a broker to sell the land on their behalf at the agreed price of RM2,000 per hectare or for RM322,000. The evidence showed that they did not engage the service of a broker to sell the land and they did not produce any bills or invoice for the fees of the broker.

[7] However the first defendant produced a report for the survey and meeting for the sale of the land which he referred to as the minutes of the meeting. At the bottom of this document there was a rubber stamp and signature of Tr Emperang ak Bayuk but there was no date on it to indicate when it was made. The first and second defendants did not give the date of this meeting when the residents of the longhouse had allegedly agreed to the sale at the price of RM2,000 per hectare. Obviously the first defendant did not prepare this report or document because it was type-written in english and he could not read and write english. During the trial he did not sign but affixed his thumbprint on his witness statement. He also affixed his thumbprint on three other documents ie on a memorandum of understanding ('MOU') dated 23 December 2010, on the sale and purchase agreement dated 24 March 2011 and on the acknowledgment of receipt of the purchase price. There was no other signature or thumbprint on this report to confirm the truths of this report. Apparently the report was an attempt by the first defendant to cover his tracks when the defendants failed to pay the balance of the purchase price to the plaintiffs.

[8] The first and second defendants insisted that the residents of the longhouse had agreed to sell the land at RM2,000 per hectare and referred to paras 7 and 8 of the MOU. These two paras referred to the deposit of RM20,000 to be paid and there was no reference to the price of RM2,000 per hectare in the MOU. However, para 5 of the MOU clearly stated that the purchase price was agreed at RM1,500 per acre. This contradicted the testimonies of the first and second defendants that the purchase price was at RM2,000 per hectare.

[9] The sale and purchase agreement dated 24 March 2011 showed that the first, second and third defendants entered into the agreement to sell the land for

A the agreed purchase price of RM604,500 on behalf of the residents of the 51 *bileks* of the longhouse to a purchaser. The name of the head of each of the 51 *bileks* was set out in *lampiran* A attached to the agreement. This list included the 26 plaintiffs and the five defendants in this suit.

B **[10]** This sale and purchase agreement was thumb-printed by the first, second and third defendants on behalf of the residents of the longhouse and they were bound by the terms of the agreement. It was clearly stated that the purchase price of this parcel of land was RM604,500. There was nothing in the agreement to provide for the purchase price of the land at RM2,000 per hectare C or for RM322,000 as the defendants had pleaded and had testified. During the trial the defendants did not adduce any evidence to support their pleadings and testimonies as such. Again the agreement clearly contradicted the pleadings and testimonies of the defendants that the purchase price for the land was only at RM322,000.

D

[11] In preamble C of the agreement, the purchaser agreed and had paid a sum of RM20,000 to the three defendants on 23 December 2010 as deposit and part payment of the purchase price. The balance of the purchase price of E RM584,500 would be paid upon the execution of the sale and purchase agreement.

[12] The evidence showed that the purchaser had paid the deposit on 23 December 2010 and the balance of the purchase price of RM584,500 on F 23 March 2011 to the first, second and third defendants. The first, second and third defendants had acknowledged receipt of this sum of RM584,500. It was explicitly stated in the acknowledgment that the first, second and third defendants undertook to immediately distribute and pay the said sum equally to the 51 *bileks* and that the payment 'shall be acknowledged by the said 51 G claimants'. The plaintiffs have exhibited the cheques for the sum of RM584,500 paid to the first, second and third defendants. In paras 8, 9 and 10 of the defence the defendants admitted paras 8, 9 and 10 of the statement of claim.

H **[13]** These again clearly contradicted the allegations of the defendants that they sold the land for only RM322,000 or that they only received the sum of RM322,000. By insisting on their allegations, in the face of their pleadings in paras 8, 9 and 10 in the defence and the overwhelming evidence adduced, there were no merits in the defence.

I

[14] The plaintiffs and the defendants were the beneficial owners of this parcel of land. first defendant was the tuai rumah of the longhouse and a committee member of the JKKK of the longhouse. The other defendants were members of the JKKK. They were appointed by the residents of the longhouse

and have accepted the appointments. In appointing the defendants as members of the JKKK and to sell the land on behalf of the residents, the residents had put their trusts and faith on the defendants as their leaders and representatives to look after the interests and affairs of the longhouse and the residents of the longhouse. The plaintiffs are the owners and beneficiaries of this parcel of land and are entitled to the proceeds of the sale. As the tuai rumah and members of the JKKK they owed a fiduciary duty of trust and care to the residents of Rh Wing: see *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and Other Appeals* [1996] 2 MLJ 265; [1997] 2 CLJ 607.

[15] The sale and purchase agreement and the acknowledgment of receipt of the purchase price, which the first, second and third defendants had thumb-printed, mandated that they must pay and distributed the purchase price in equal shares to all 51 *bileks* of Rh Wing which they failed to do so. There was no reasonable explanation by the defendants for this failure. Instead the defendants wanted to profit from the sale and wanted to keep the balance of the purchase price for themselves. Obviously the defendants have breached that trust and duty of care to the plaintiffs and the other residents of Rh Wing.

[16] Further and in the alternative, the defendants in para 19 of the defence pleaded that the land could not be bought and sold especially to the purchaser in this case who was from outside the longhouse. It was submitted that the sale was void under s 24 of the Contracts Act 1950. This pleading in the alternative was contrary to the pleaded case of the defendants that they had successfully sold the land to the purchaser and had received the payments thereof. They did testify that the purchaser was from outside the district or could not purchase the land. The defendants had dealt with the purchaser in the sale and purchase of this land. They did not deny the facts that all the residents of the longhouse including the plaintiffs and the defendants had approved and agreed to sell the land and that it had been sold by the defendants on behalf of the residents of the longhouse to the purchaser. Since then there was no complaint by the defendants that the sale was void or that they could not sell the land to the purchaser.

[17] In the event that the sale was void, then the defendant should have refunded the proceeds from the sale to the purchaser instead of keeping the proceeds or the balance thereof for themselves. Instead the defendants insisted that it was sold for RM322,000 only and not for RM604,500.

[18] The plaintiffs on a balance of probabilities have proved their case against the defendants. The defendants must pay the sum of RM144,038.47 to the plaintiffs with interest thereon at 4%pa from the date of the date of the writ filed in court. The judgment is accordingly entered for the plaintiffs with costs of RM15,000.

[19] The plaintiffs' claim against the defendants is for payment of the sum of RM144,038.47 due and owing to them. They have not shown that they have suffered any loss or damages in addition to the payment of the said sum claimed against the defendant. Prayer 18(c) of the statement of claim is dismissed.

Plaintiffs' claim allowed with costs.

Reported by Ashgar Ali Ali Mohamed